HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

CLR. No. 77 / 03

Union of India Pithoragarh

VS

Ashok Kumar and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 21.08.04

Initial of Judge

In the High Court of Uttaranchal at Nainital.

Civil Revision No. 77 of 2003

Union of India,
through the Commander,
Works Engineers (Hills),
Pithoragarh ..... Revisionist.

Vs.

1. Ashok Kumar S/o Kailash Chandra
   R/o 82 Sarwat Gate, Muzaffarnagar
   U.P.
2. District Judge, Pithoragarh ... Respondents.

Date: 21-8-2004

Ms. Anjali Bhargava , Advocate for the petitioner.
Sri M.C. Pande, learned counsel for the respondents.

Hon'ble Rajesh Tandon, J.

By the impugned order dated 18-10-2003 passed during execution proceedings the District Judge, Pithoragarh, has allowed the application of the decree holder and rejected the objection filed by the respondent and directed to pay a sum of Rs. 80,000/- to the decree holder within a month.

Brief facts of the case are that in pursuance to the contract agreement between the contractor Ashok Kumar and CWE (Hills) Pithoragarh on 25.10.1984, a contract of Rs. 14,40,116-47 was awarded to the respondent. The contractor completed the work by the extended period and final bill for a sum of Rs. 94,362/- was prepared which was signed by the contractor. After the preparation of the final bill, the contractor raised some objections regarding some claims and the matter of dispute was referred to the sole Arbitrator by the District Judge Pithoragarh while deciding the application U/s 20 of the Indian Arbitration Act, 1940 in terms of the condition no. 70 IAFW-2249 (general conditions of the contracts) .

The Arbitrator on 9-6-1993, after hearing both the parties published the award. Thereafter the contractor has filed an application for filing the award to be made rule of the court and the petitioner-respondent also filed application under section 33 of the Arbitration Act for setting aside the award as well as against the application for making the award the rule of the court. The said case was registered as O.S. No. 26/1993. Ultimately on 22-2-1995 both the parties filed application 30-C-2 stating therein that the award be made the rule of the court hence the petition for making the award rule of the court was decreed and the objections of the judgment-debtor were rejected. The order is quoted below:-

"This is a reference to this Court under section 14 of the Arbitration Act, 1940. The Court referred the matter to the Arbitrator who submitted the Arbitration award paper no. 7-C. The objection were invited from both the parties. However, subsequently the parties arrived at a settlement outside the court and moved an application 30-C-2 that the case be decided in terms of this application and award be passed accordingly. I have gone through the award and application 30C-2 and I find that the case be decided accordingly.

The petition is allowed. The award and application 30C-2 are made Rule of the Court. Petition no. 26/1993 is decided accordingly."

The decree holder has moved for execution of the decree and the executing court after hearing both the parties has found that a sum of Rs. 80,000/- has been left to be paid in pursuance of the award. The learned Judge has allowed the application for execution and has found that amount of Rs. 80,000/- has to be paid within 90 days of the award and on failure of the same, 6% interest per annum has become due.

In view of the aforesaid facts and circumstances I find no infirmity in the order passed by the District Judge, Pithoragarh. From the chart furnished by learned counsel for the respondent it will appear that the amount of Rs. 80,000/0 has become due to the respondents as was held by the learned District Judge.

In view of above the writ petition is dismissed.

(Rajesh Tandon, J)

ISB